

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AMES COMMUNITY SCHOOL  
DISTRICT,

Petitioner,

vs.

IOWA DEPARTMENT OF EDUCATION,

Respondent.

Case No. CV 7316

**RULING AND ORDER**

FILED  
POLK COUNTY, IA.  
2009 JAN 26 PM 1:00  
CLEMA DISTRICT COURT

This case was fully submitted following oral argument by counsel of record on December 16, 2008. Being so advised, and having reviewed the record below, and the Court FINDS as follows:

**FACTS**

This judicial review proceeding was filed on September 2, 2008. Petitioner Ames Community School District (Ames) appeals from two findings of fact and four conclusions of law in a final declaratory order issued by the Iowa Department of Education (IDOE) concerning what fees a school district may—and may not—reasonably charge its students. Ames is challenging IDOE's (1) definitions of "tuition" and "necessary school supply," which IDOE used in determining whether items Ames wished to charge student fees for were expressed by or could be implied from statutes, and (2) conclusion that Ames cannot charge students for extracurricular and intramural activities, transportation, lockers and locks, and flowers, balloon drop, and security at graduation ceremonies.

Ames concedes that IDOE Director Judy Jeffrey has broad discretion to interpret school laws and rules related to those laws. Iowa Code § 256.9(16) (2007). This Court

must give "appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency."

Iowa Code § 17A.19(11)(c) (2007).

The relevant Code Sections are 282.6 and 256.9:

**282.6 Tuition.**

Every school shall be *free of tuition* to all actual residents between the ages of five and twenty-one years.

Iowa Code § 282.6 (2007) (emphasis added).

**256.9 Duties of director.**

Except for the college student aid commission and the public broadcasting board and division, *the director shall:*

.....

16. *Interpret the school laws* and rules relating to school laws.

.....

Iowa Code § 256.9(16) (2007) (emphasis added).

It is well-settled under Iowa Code chapter 17A that reviewing courts should give appropriate deference to the view of the agency

with respect to particular matters *that have been vested by a provision of law in the discretion of the agency.*

Iowa Code § 17A.19(11)(c) (2007) (emphasis added).

To date, the Iowa legislature has not defined what "tuition" means. However, IDOE Director Judy Jeffrey has discretion to articulate a reasonable definition of tuition in the face of the legislative void under broad express statutory authority the legislature bestowed upon the Director for this purpose.

The term "free of tuition" in Iowa Code § 282.6 cannot be interpreted to mean that Iowa public schools must be provided "free of charge," since the legislature has

expressly authorized schools to charge certain fees. The following fees for services and supplies are expressly authorized:

1. Driver's Education Instruction – Iowa Code § 282.6 (“fees may be charged covering instructional costs for a ... drivers education program”).
2. Summer School Instruction – Iowa Code § 282.6 (“...fees may be charged covering instructional costs for a summer school ... program”).
3. Textbooks and School Supplies – Iowa Code § 301.1 (“The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund.”).
4. Eye Protective Devices – Iowa Code § 280.10 (school districts may require students and teachers to pay no more than actual cost for these safety devices).
5. Ear Protective Devices – Iowa Code § 280.11 (school districts may require students and teachers to pay no more than actual cost for these safety devices).
6. Transportation for Resident Students Not Entitled to Free Transportation – Iowa Code § 285.1 (transportation must be free to elementary students who live more than 2 miles and to high school students who live more than 3 miles from their designated attendance centers. School districts may provide transportation for some or all resident students who attend public school or students who attend nonpublic schools who are not entitled to transportation. Schools in their discretion may collect from the parent or guardian of the student not more than the pro rata cost for such optional transportation.)
7. Child Care Programs – Iowa Code § 279.49 (school may operate child care program and establish a fee for participation).
8. Facility Usage – Iowa Code § 276.8(11) (district-wide advisory counsel may recommend to the school board regulations, guidelines and fees for facility usage for community activities)
9. Public Records – Iowa Code § 22.3 (authorizes school to charge a fee for the expenses of examination and copying of public records).

10. Breakfast/lunch – Iowa Code § 283A.2 (schools may use funds from the sale of school breakfasts and lunches for the purpose of operating a breakfast or lunch program).

11. Fines for lost or damaged property – Iowa Admin. Code § 281-18.4 (fines are not fees that must be subject to fee waiver rules).

12. Sale or rental of school property – Iowa Code § 297.22 (authorized board to sell, lease or dispose of, in whole or in part, real property or personal property belonging to the district).

Iowa school boards have the express authority to:

... make rules for its own government and that of the directors, officers, employees, teachers and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and shall aid in the enforcement of the rules, and required the performance of duties imposed by law and the rules.

Iowa Code § 279.8. In addition, school boards have the express authority to “... make all contracts necessary or proper for exercising the powers granted and performing the duties required by law. ...” Iowa Code § 279.12. From these broad grants of authority,

Iowa courts have implied school authority to:

- enforce attendance requirements through use of suspension, *Burdick v. Babcock*, 31 Iowa 562 (1871);
- teach music and to purchase a musical instrument (organ) connected with music education, *Bellmeyer v. Ind. Dist. of Marshalltown*, 44 Iowa 564 (1876);
- adopt a rule prohibiting students from playing football on a team purporting to represent the school, *Kinzer v. Directors of Ind. Sch. Dist.*, 105 N.W. 686 (Iowa 1906);
- employ an attorney to defend against a petition for dissolution, *Rural Ind. Sch. Dist. of Eagle v. Daly*, 201 Iowa 286, 207 N.W. 124 (1926);
- reimburse teachers for tuition expenses, *Barnett v. Durant Comm. Sch. Dist.*, 249 N.W.2d 626 (Iowa 1977);
- adopt a rule prohibiting married students from participating in extracurricular activities, *Board of Dir. v. Green*, 147 N.W.2d 854 (Iowa 1967);

- pay a lump sum benefit to a teacher at retirement or death based upon accumulated sick leave, *Bettendorf Educ. Ass'n v. Bettendorf Comm. Sch. Dist.*, 262 N.W.2d 550 (Iowa 1978);

- employ counsel to defend an administrator in an action before the professional licensing board, *Bishop v. Iowa State Board of Pub. Inst.*, 395 N.W.2d 888 (Iowa 1986);

- require physical education teachers teaching swimming to have CPR training, despite the fact that the state teacher licensing board did not require it for a license to teach, *Pleasant Valley Educ. Assn. v. Pleasant Valley Comm. Sch. Dist.*, 449 N.W.2d 894 (Iowa 1989).

To the District's knowledge, no Iowa appellate court has addressed a school's implied authority to charge student fees. However, the IAG has considered a district's implied authority to require students to wear a standard uniform for gym class, and to purchase and resell the uniforms to the students at cost. Op. Att'y Gen. #86-1-2(L). Because Iowa Code § 279.8 grants a school board the power to make rules for its own government, the IAG concluded that the board could require students to wear a standard uniform in gym class. The IAG went on to state that "[g]iven the authority of school boards to make rules pursuant to § 279.8, to contract pursuant to § 279.12, and to operate the educational program pursuant to ch. 280, we know of no reason in law or logic to prevent resale of uniforms to students."

In another opinion, the IAG concluded that schools have the implied authority to engage a commercial photographer to take pictures of students at school, which would be used both for school purposes and would be sold to the students' families. Op. Att'y Gen. #79-4-32. In determining whether this action was within the school's legal authority, the IAG looked to Iowa Code § 274.1 (exclusive jurisdiction over school matters), and § 279.8 (board authority to make rules), and concluded that a school board has "broad discretion in the management of school affairs."

[I]f the action of the board is within the power conferred upon it by the legislature and pertains to a matter in which the board is vested with authority to act, then the courts cannot review the action of the board and call in question the manner of the exercising of the discretion of the board in regard to a subject-matter over which it has jurisdiction.

*Id.*, citing *Security Nat'l Bank v. Bagley*, 210 N.W. 947 (Iowa 1926). In the absence of any other legal restriction, the broad power to conduct the school's affairs was sufficient authority for the school to contract with the commercial photographer.

In the instant case, IDOE concluded that if an item is "essential to the teacher's presentation of a course," the item impliedly is included within "tuition" and must be provided to students free of charge.

IDOE's interpretation of the statutory term "tuition" found at Iowa Code section 282.6 is entitled to the deference accorded to IDOE's view under section 256.9(16) by section 17A.19(11)(c). IDOE's interpretation is not erroneous, irrational, illogical, wholly unjustifiable, unreasonable, arbitrary, capricious or an abuse of discretion. It is a reasonable exercise of the discretion afforded the agency and is consequently entitled to deference on judicial review.

Iowa Code section 301.1 provides in part, as follows:

**301.1 Adoption—purchase and sale—accredited nonpublic school pupil textbook services.**

1. The board of directors of each and every school district is hereby authorized and empowered . . . to contract for and buy . . . any and all other *necessary school supplies*.

(emphasis added). The Iowa legislature has elected not to define what "necessary school supply" means, nor whether it intended this provision to broadly apply to everything a school board purchases for its district. Consequently, the analysis in

section I(A) above applies with equal force to the "necessary school supply" definitional question.

IDOE concluded a "necessary school supply" for which a student fee can be charged can only be something that is "not essential to the teacher's presentation of a course." IDOE cites as instructive examples of items essential to a teacher's presentation of a course (for which no student fee can be charged) such things as art supplies for an art class, chemicals for a science class, and basic wood for an industrial arts class. However, if a student wishes to voluntarily upgrade basic course materials to a level above what is provided by the course teacher, the school can charge the student a fee for the upgrade differential.

IDOE's interpretation of the statutory phrase "necessary school supply" found at Iowa Code section 301.1 is reasonable under its existing statutory authority. This interpretation is entitled to the deference.

On the question of authority for charging fees for extracurricular and intramural activities, IDOE concluded:

**I. Participation in intramural activities**

See paragraph "q" below; we see no justification to treat participation in intramurals differently from participation in other extracurricular events.

(Dec. Order at p. 66, ¶ 8.)

.....

**q. Participation in extracurricular program**

No student may be assessed a fee merely for *participating* in an extracurricular activity or program. Iowa is not a "pay to play" state. But *this does not mean that "fees which can appropriately be charged as school supply fees pursuant to § 301.1 cannot be charged in connection with tangible items used in extracurricular activities."* OAG # 81-8-29. A towel

is not essential to instruction; thus, a modest towel fee may be charged. A fee may not be charged for equipment, coaching salaries, or the cost of officials. These costs are equivalent to “essential to instruction” in the extracurricular realm.

(Dec. Order at p. 67, ¶ 5) (emphasis added). Ames contends

[t]he DE concluded that a school cannot make *any charge* related to the participation in extracurricular activities because “Iowa is not a ‘pay to play’ state.”

(Ames Petitioner’s Brief at p. 23, ¶ 4.) (emphasis added). Order provision “q” quoted above makes clear that school districts are prohibited from charging a fee for anything associated with extracurricular activities akin to being “essential to instruction” in the classroom. Conversely, order provision “q” also provides that districts may charge a student fee for school supplies permitted under Iowa Code section 301.1 that are not “essential to instruction.”

This is a reasonable position for IDOE to take under the discretionary authority afforded it under Iowa Code section 256.9(16) by section 17A.19(11)(c). As IDOE’s order makes plain, its interpretation does not mean that a school district cannot charge modest fees for anything not essential to an extracurricular activity—for example, modest towel fees. Whether an item is “in” or “out” as a potential student fee generator will be a fact determination each district must make based upon the nature of the extracurricular activity under consideration.

IDOE concluded the following regarding transportation fees:

**p. Transportation costs associated with extracurricular program**

As discussed on pages 63-64 herein, no student may be assessed a fee to cover transportation costs of an extracurricular program or activity.

(Dec. Order at p. 67, ¶ 4.) The relevant discussion at pages 63-64 concludes:

The unsettled question is whether transportation associated with extracurricular activities is discretionary transportation for which a fee may be charged. Heretofore, this agency has acknowledged that there is a split among educators and education lawyers about whether a fee may be charged for this transportation.

We now resolve the issue by giving the benefit of the doubt to the students who wish to participate in these activities. We recognize that *most, if not all, schools require participants in extracurricular activities to use the school's transportation to and from "away" contests. Thus, a fee for the cost of transportation comes dangerously close to "pay to play," which is not allowed in Iowa.*

(Dec. Order at p. 64, ¶¶ 4-5) (emphasis added).

IDOE's conclusion nixing student transportation fees derives from the same analysis as IDOE's conclusion regarding extracurricular and intramural activities. This conclusion is a reasonable exercise of the discretion afforded the agency by Iowa Code section 256.9(16) through section 17A.19(11)(c) and is entitled to deference.

IDOE's declaratory order relevantly states:

**g. Rental of musical instruments, performance uniforms/robes, athletic equipment, lockers and locks**

....

Lockers are as much a fixture in attendance centers as are classrooms. To charge a fee for locker rental is more akin to tuition. As for locks, a combination lock is an integral part of the locker; a fee for that type of lock may not be charged. Any other type of lock is not a "necessary school supply," and thus there is no authority for charging a fee.

....

(Dec. Order at p. 65, ¶ 8.)

Ames takes issue with IDOE's conclusion that fees for lockers and locks are impermissible. Ames bases its argument regarding lockers and locks largely upon the fact that IDOE also concluded a minimal student fee for a parking sticker is permissible.

There is a legally material difference between IDOE authorizing a student fee for a parking sticker and not authorizing student fees for locker rental and locks. The former is implied from express statutory authority, while the latter are not and cannot be implied from IDOE's existing statutory authority. As Ames recognizes, Iowa Code section 279.8A<sup>1</sup> relevantly states:

**279.8A Traffic and parking**

The board may make necessary rules to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on school grounds. The rules may provide for . . . *registration of vehicles and bicycles.*

Iowa Code § 279.8A (2007) (emphasis added).

It is not irrational, arbitrary, capricious, unreasonable, inconsistent with existing law or an abuse of discretion for the agency to conclude that local school districts are the beneficiaries of an explicit statutory basis from which to infer a parking registration fee can be charged to students, while at the same time concluding that local school districts have no statutory basis from which to infer that student fees for lockers and locks can be charged. IDOE's interpretation of Iowa Code section 279.8A is reasonable, and is entitled to the deference accorded to IDOE's view under section 256.9(16) by section 17A.19(11)(c).

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<sup>1</sup> In its declaratory order, IDOE inadvertently cites Iowa Code section 279.8 as authority for its parking analysis. The context of its analysis, specifically referencing parking registration, clearly suggests the reference to section 279.8 was intended to be a reference to section 279.8A, the relevant parts of which are cited above.

Ames contends that students participating in graduation exercises should be assessed a "senior fee" for their attendance. On this issue, IDOE concluded:

**n. Senior fee**

As further described by the Petitioner, this "fee" covers the following: cap and gown, tassel, sash, diploma, diploma cover, flowers, balloon drop, and security at graduation. With the exception of the diploma, none of these items are necessary school supplies. Because districts have an obligation to provide a diploma to all students who meet graduation requirements, it would be academically dishonest to withhold an earned diploma. There can be no fee associated with the awarding of a diploma . . . .

The cap and gown, tassel, and sash, as well as the diploma cover, must be voluntary purchases; therefore, a fee may be charged. But any district that *chooses* to provide flowers, balloon drop, and/or security at graduation may not pass along any of these expenses by way of a school fee.

(Dec. Order at p. 66, ¶ 10; p. 67, ¶¶ 1-2.) (emphasis added)

It was reasonable for IDOE to conclude that a student fee for flowers, balloon drop, security at graduation and the like is inappropriate, as these items cannot reasonably be interpreted to be "necessary school supplies" and there is no express statutory basis or implied statutory basis for charging such a student fee. Providing these items or something similar for a school graduation ceremony is an election a school district, not a student, makes. If the district does not feel it should expend money for these items, the district should not provide the items. It would be unreasonable to pass the costs of these items on to students in the guise of a "senior fee" absent express or implied statutory authority for doing so. (Dec. Order at pp. 66 ¶ 10, and 67 ¶ 2.)

**CONCLUSIONS OF LAW**

IDOE's final declaratory order defining the challenged terms and delineating what fees are impermissible for Petitioner Ames Community School District to collect from students is AFFIRMED. Court costs are to be paid by Petitioner.

SO ORDERED this 26<sup>th</sup> day of January, 2009.

*Artis I. Reis*

**ARTIS I. REIS, JUDGE**  
Fifth Judicial District of Iowa

FOR CLERK <input type="checkbox"/> C <input type="checkbox"/> U <input type="checkbox"/> J <input checked="" type="checkbox"/> X
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